

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 364
94TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, March 1, 2007, with recommendation that the Senate Committee Substitute do pass.

1276S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 192.300, 537.295, and 640.710, RSMo, and to enact in lieu thereof three new sections relating to agricultural operations, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 192.300, 537.295, and 640.710, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 192.300,
3 537.295, and 640.710, to read as follows:

192.300. 1. The county commissions and the county health center boards
2 of the several counties may make and promulgate orders, ordinances, rules or
3 regulations, respectively as will tend to enhance the public health and prevent
4 the entrance of infectious, contagious, communicable or dangerous diseases into
5 such county, but any orders, ordinances, rules or regulations shall not be in
6 conflict with any rules or regulations authorized and made by the department of
7 health and senior services in accordance with this chapter or by the department
8 of social services under chapter 198, RSMo. The county commissions and the
9 county health center boards of the several counties may establish reasonable fees
10 to pay for any costs incurred in carrying out such orders, ordinances, rules or
11 regulations, however, the establishment of such fees shall not deny personal
12 health services to those individuals who are unable to pay such fees or impede
13 the prevention or control of communicable disease. Fees generated shall be
14 deposited in the county treasury. All fees generated under the provisions of this
15 section shall be used to support the public health activities for which they were
16 generated. After the promulgation and adoption of such orders, ordinances, rules
17 or regulations by such county commission or county health board, such

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 commission or county health board shall make and enter an order or record
19 declaring such orders, ordinances, rules or regulations to be printed and available
20 for distribution to the public in the office of the county clerk, and shall require
21 a copy of such order to be published in some newspaper in the county in three
22 successive weeks, not later than thirty days after the entry of such order,
23 ordinance, rule or regulation. Any person, firm, corporation or association which
24 violates any of the orders or ordinances adopted, promulgated and published by
25 such county commission is guilty of a misdemeanor and shall be prosecuted, tried
26 and fined as otherwise provided by law. The county commission or county health
27 board of any such county has full power and authority to initiate the prosecution
28 of any action under this section.

29 **2. Notwithstanding the provisions of subsection 1 of this section**
30 **to the contrary, no public health order, ordinance, rule, or regulation**
31 **promulgated by a county commission or county health center board**
32 **under this section shall apply to any agricultural operation and its**
33 **appurtenances. As used in this section, the term "agricultural**
34 **operation and its appurtenances" shall have the same meaning as in**
35 **section 537.295, RSMo.**

537.295. 1. No agricultural operation or any of its appurtenances shall
2 be deemed to be a nuisance, private or public, **or trespass** by any changed
3 conditions in **or about** the locality thereof after the facility has been in operation
4 for more than one year, when the facility was not a nuisance at the time the
5 operation began. An agricultural operation protected pursuant to the provisions
6 of this section may reasonably expand, **diversify, or modernize** its operation
7 [in terms of acres or animal units] without losing its protected status so long as
8 all **applicable** county, state, and federal environmental codes, laws, or
9 regulations are met by the agricultural operation. Reasonable expansion,
10 **diversification, or modernization** shall not be deemed a public or private
11 nuisance **or trespass**, provided the [expansion] **changed condition** does not
12 create a substantially adverse effect upon the environment or [creates] **create**
13 a hazard to public health and safety, or [creates] **create** a measurably significant
14 difference in environmental pressures upon existing and surrounding neighbors
15 because of increased pollution. Reasonable expansion, **diversification, or**
16 **modernization** shall not include complete relocation of a farming operation by
17 the owner within or without the present boundaries of the farming operation;
18 however, reasonable expansion of like kind that presently exists[,] may occur. If

19 a poultry or livestock operation is to maintain its protected status following a
20 reasonable expansion, **diversification, or modernization**, the operation must
21 ensure that its waste handling capabilities and facilities meet or exceed minimum
22 recommendations of the University of Missouri extension service for storage,
23 processing, or removal of animal waste. The protected status of an agricultural
24 operation, once acquired, shall be assignable, alienable, and inheritable. The
25 protected status of an agricultural operation, once acquired, shall not be waived
26 by the temporary cessation of farming or by diminishing the size of the
27 operation. [The provisions of this section shall not apply whenever a nuisance
28 results from the negligent or improper operation of any such agricultural
29 operation or its appurtenances.]

30 2. As used in this section the term "agricultural operation and its
31 appurtenances" includes, but is not limited to, any facility used in the production
32 [or], processing, **or storage** for commercial purposes of crops, livestock, **equine**,
33 swine, poultry, livestock products, swine products or poultry products.

34 3. The provisions of this section shall not affect or defeat the right of any
35 person, firm or corporation to recover damages for any injuries sustained by it as
36 a result of the pollution or other change in the quantity or quality of water used
37 by that person, firm or corporation for private or commercial purposes, or as a
38 result of any overflow of land owned by or in the possession of any such person,
39 firm or corporation.

40 4. The provisions of this section shall not apply to any nuisance **or**
41 **trespass** resulting from an agricultural operation located within the limits of any
42 city, town or village on August 13, 1982.

43 5. In any [nuisance] action brought in which an agricultural operation is
44 alleged to be a nuisance **or trespass**, and which is found to be frivolous by the
45 court, the defendant shall recover the aggregate amount of costs and expenses
46 determined by the court to have been reasonably incurred [in] **on** his behalf in
47 connection with the defense of such action, together with a reasonable amount for
48 attorneys fees.

49 **6. No agricultural operation or any of its appurtenances shall be**
50 **deemed a nuisance, private or public, or trespass, for conditions**
51 **associated with any farming-related activities conducted by the**
52 **agricultural operation or any of its appurtenances. For purposes of**
53 **this section, "farming-related activities" shall include, but not be limited**
54 **to, planting, cultivating, harvesting, mowing, application of authorized**

55 pesticides or herbicides, animal husbandry practices and activities,
56 land clearing, or the construction of roads, lakes, and ponds associated
57 with a farming operation.

58 7. The provisions of this section shall not apply whenever a
59 nuisance or trespass results from negligence in the conduct of any
60 farming-related activity.

640.710. 1. The department shall promulgate rules regulating the
2 establishment, permitting, design, construction, operation and management of
3 class I facilities. The department shall have the authority and jurisdiction to
4 regulate the establishment, permitting, design, construction, operation and
5 management of any class I facility. Such rules may require monitoring wells on
6 a site-specific basis when, in the determination of the division of geology and land
7 survey, class IA concentrated animal feeding operation lagoons are located in
8 hydrologically sensitive areas where the quality of groundwater may be
9 compromised. Such rules and regulations shall be designed to afford a prudent
10 degree of environmental protection while accommodating modern agricultural
11 practices.

12 2. Except as provided in subsections 3 and 4 of this section, the
13 department shall require at least but not more than the following buffer distances
14 between the nearest confinement building or lagoon and any public building or
15 occupied residence, except a residence which is owned by the concentrated animal
16 feeding operation or a residence from which a written agreement for operation is
17 obtained:

18 (1) For concentrated animal feeding operations with at least one thousand
19 animal units, one thousand feet;

20 (2) For concentrated animal feeding operations with between three
21 thousand and six thousand nine hundred ninety-nine animal units inclusive, two
22 thousand feet; and

23 (3) For concentrated animal feeding operations of seven thousand or more
24 animal units, three thousand feet.

25 3. All concentrated animal feeding operations in existence as of June 25,
26 1996, shall be exempt from the buffer distances prescribed in subsection 2 of this
27 section. Such distances shall not apply to concentrated animal feeding operations
28 which have received a written agreement which has been signed by all affected
29 property owners within the buffer distance.

30 4. The department may, upon review of the information contained in the

31 site plan including, but not limited to, the prevailing winds, topography and other
32 local environmental factors, authorize a distance which is less than the distance
33 prescribed in subsection 2 of this section. The department's recommendation
34 shall be sent to the governing body of the county in which such site is
35 proposed. The department's authorized buffer distance shall become effective
36 unless the county governing body rejects the department's recommendation by a
37 majority vote at the next meeting of the governing body after the recommendation
38 is received.

39 [5. Nothing in this section shall be construed as restricting local controls.]

Unofficial ✓

Bill

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